IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

Crl.MC.No. 3471 of 2007()

CRIME NO.756/07 OF KOTTARAKKARA POLICE STATION

PETITIONER: ACCUSED 1 & 2

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1. ITTY OMMAN, S/O ITTY,
   AGED 88 YEARS, RESIDING AT KOCHUVEETTIL,
   KALAYAPURAM P.O., KALAYAPURAM MURI,
   KALAYAPURAM VILLAGE, KOTTARAKKARA TALUK,
   KOLLAM.

2. G.SURENDRAN, S/O GOPALAN,
   AGED 42 YEARS, SUDHA VILASAM,
   KALAYAPURAM P.O., KALAYAPURAM MURI,
   KALAYAPURAM VILLAGE, KOTTARAKKARA TALUK,
   KOLLAM.

BY ADV. SRI.N.UNNIKRISHNAN

RESPONDENTS: COMPLAINANTS

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1. STATE OF KERALA, REP. BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. THE CIRCLE INSPECTOR OF POLICE,
   KOTTARAKKARA POLICE STATION,
   KOTTARAKKARA.

3. THE ASSISTANT SUB INSPECTOR OF POLICE,
   KOTTARAKKARA POLICE STATION, KOTTARAKKARA.

4. THOMSON K.THOMAS, S/O THOMAS,
   AGED 44 YEARS, KIDANGALIVEETTIL,
   KALAYAPURAM P.O., KALAYAPURAM MURI,
   KALAYAPURAM VILLAGE, KOTTARAKKARA TALUK,
   KOLLAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3471 of 2007

Dated this the 27th day of November, 2007

O R D E R

Petitioners are accused 1 and 2 in an F.I.R registered alleging offences punishable under Sections 447 and 427 I.P.C. The 1st petitioner is an elderly person aged about 88 years. The petitioners have come to this Court with a prayer that the F.I.R registered against them, a copy of which is produced as Annexure-3, may be quashed invoking the extraordinary inherent jurisdiction under Section 482 Cr.P.C.

2. What is the ground ? Obviously the dispute is about the lie of the boundary between 2 properties. A compound wall was admittedly constructed. That compound wall admittedly stands demolished. The petitioners would contend that the defacto complainant had demolished the compound wall constructed by him voluntarily on his own. The defacto complainant in the F.I statement alleged that it was the petitioners who took law into their hands and demolished the compound wall.

3. According to the learned counsel for the petitioners, the petitioners are respectable persons. They are not people who would indulge in such a criminal conduct. In these circumstances it is prayed that the F.I.R registered may be quashed.

4. The extraordinary inherent jurisdiction available to this Court under Section 482 Cr.P.C does certainly clothe this Court with jurisdictional competence to set aside an F.I.R in an appropriate case. There can be no doubt on that proposition. But disputed questions of fact cannot normally and ordinarily be attempted to be resolved in proceedings under Section 482 Cr.P.C. I repeat that it is admitted that a compound wall stood there. It is the case of the petitioners that the said compound wall was constructed recently and the defacto complainant was persuaded to demolish the said compound wall. The defacto complainant's version is that the petitioners had taken law into their hands and had demolished the compound wall.

5. Certainly the disputed question can be resolved now only by a proper investigation to be conducted by the police. I am unable to agree that any circumstances exist justifying or warranting the invocation of the jurisdiction under Section 482 Cr.P.C.

6. The learned counsel for the petitioners then contends that the Circle Inspector of Police, Kottarakkara, the 2nd respondent is taking undue interest in the matter and it is at his instance that the F.I.R was registered. Admittedly the investigation is being conducted by the 3rd respondent. I do not find any reason to issue any direction regarding the personnel who is to conduct the investigation now.

7. The learned counsel for the petitioners then contends that subsequent events have taken place and a barbed wire fencing constructed by the petitioners has been demolished. Against that, a private complaint has admittedly been filed before the Magistrate and action is pending before the Magistrate. No directions regarding that also need be issued in the matter. The upshot of the above discussions is that there is no necessity to invoke the jurisdiction under Section 482 Cr.P.C in this matter now.

8. This Crl.M.C is, in these circumstances, dismissed.

(R.BASANT, JUDGE)

rtr/-